

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

## I. INTRODUCTION

This matter comes before the Court on Defendants Charlie's One Stop Computer Center Inc.'s ("Charlie I") and Michael Aucoin's Motion to Dismiss for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2). Dkt. #27. For purposes of this motion, Defendants argue that this Court lacks jurisdiction because maintaining the action here is not reasonable. *Id.* at 3. Plaintiff opposes the motion on the merits, but does not oppose a transfer of this action to the District of Massachusetts. Dkt. #35. Accordingly, for the reasons discussed herein, the Court GRANTS Defendants' Motion in Part and hereby TRANSFERS this matter to Massachusetts.

## II. BACKGROUND

On June 1, 2016, Plaintiff filed a Complaint against John Doe Defendants alleging that unknown persons had infringed on several software trademarks by illegally installing such

1 software on computers using fraudulent product keys. *See* Dkt. #1. On June 23, 2016, Microsoft  
2 sought expedited discovery to uncover the identity of the John Doe Defendants, which this Court  
3 granted. Dkts. #5 and #7. As a result, Plaintiff identified Defendant Charlie's One Stop  
4 Computer Center II, Inc. ("Charlie's II"), an entity that had purchased assets of Charlie I. *Id.*  
5 Plaintiff amended its Complaint for a second time on May 10, 2017, to add Charlie I and Mr.  
6 Aucoin as additional Defendants. Dkt. #17. The instant motion followed.  
7

8 **III. DISCUSSION**

9 **A. Legal Standard for Transfers of Venue**

10 Under 28 U.S.C. § 1404, this Court has discretion to transfer this case in the interests of  
11 convenience and justice to another district in which venue would be proper. *See Jones v. GNC*  
12 *Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000). Specifically, Section 1404(a) states:

13 For the convenience of parties and witnesses, in the interest of justice, a  
14 district court may transfer any civil action to any other district or division  
15 where it might have been brought or to any district or division to which all  
16 parties have consented.

17 28 U.S.C. § 1404(a). The purpose of this statute is to "prevent the waste of time, energy, and  
18 money and to protect litigants, witnesses and the public against unnecessary inconvenience and  
19 expense." *Pedigo Prods., Inc. v. Kimberly-Clark Worldwide, Inc.*, No. 3:12-CV-05502-BHS,  
20 2013 U.S. Dist. LEXIS 12690, 2013 WL 364814, at \*2 (W.D. Wash. Jan. 30, 2013) (quoting *Van*  
21 *Dusen v. Barrack*, 376 U.S. 612, 616, 84 S. Ct. 805, 11 L. Ed. 2d 945 (1964)).

22 In the instant matter, Defendants admit that the District of Massachusetts as an alternate  
23 forum "exists and is available here." Dkt. #27 at 8. Defendants further admit that they both  
24 "reside" and "may be found" in that District, that it will be more convenient, and more efficient.  
25 *Id.* at 8-12. Plaintiff does not oppose the transfer of this matter to the District of Massachusetts.  
26 Dkt. #35 at 15-16. In fact, Plaintiff asserts that if this Court were to dismiss this action for lack  
27  
28

1 of personal jurisdiction, it would simply refile the matter against the Defendants in that District.  
2

3 Dkt. #35 at 16.  
4

5 Accordingly, having reviewed the parties' briefing, the Declarations in support thereof,  
6 and the remainder of the record, the Court finds that transfer is appropriate.  
7

8 **B. Request for Attorney's Fees**  
9

10 Defendants seek attorney's fees pursuant to RCW 4.28.185(5) for the costs associated  
11 with litigating this matter in Washington. Dkt. #27 at 15. Washington's long-arm statute  
12 provides that if a defendant is served under the statute "and prevails in the action, there may be  
13 taxed and allowed to the defendant as part of the costs of defending the action a reasonable  
14 amount to be fixed by the court as attorney's fees." RCW 4.28.185(5). Plaintiff opposes the  
15 request, arguing that its matter was brought in this jurisdiction in good faith, it was not meant for  
16 the purpose of harassing Defendants, and that it offered to transfer the case to Massachusetts after  
17 the motion to dismiss was filed. Dkt. #35 at 16-18.  
18

19 As the Washington Supreme Court has noted, frivolity and harassment are only the "first  
20 question[s]" to be answered when evaluating whether to award fees under RCW 4.28.185(5).  
21 *State v. O'Connell*, 84 Wn.2d 602, 606, 528 P.2d 988 (1974). If there were a reasonable basis  
22 for believing that personal jurisdiction over the defendant existed, the next question is:  
23

24 Has the defendant, in being forced to defend the action in this state, been  
25 subjected to burdens and inconveniences which would have been avoided had  
26 the trial been conducted at the place of his domicile, which are not balanced  
27 by conveniences to the defendant resulting from the trial of the action in this  
28 state, and which are of sufficient severity to warrant the court in concluding  
29 that, without the award of attorney fees, traditional notions of fair play and  
30 substantial justice would be violated?  
31

32 *O'Connell*, 84 Wn.2d at 606.  
33

1 In this case, the Court is discouraged by Plaintiff's lack of effort to resolve the instant  
2 jurisdictional questions efficiently. Indeed, it first threatened Defendants that it would vigorously  
3 defend against any motion to dismiss for lack of jurisdiction, *see* Dkt. #37-1, Ex. A., and then  
4 ("upon further consideration") only after the instant motion was filed informed Defendants that  
5 it would consent to transfer of this matter to Massachusetts, but only if Defendants withdrew the  
6 motion and request for attorney's fees. Dkt. #36-1 Ex. A. This resulted in both the parties and  
7 the Court utilizing their time and resources to address the motion, when Plaintiff ultimately did  
8 not oppose transfer. Accordingly, the Court finds that it is appropriate to exercise its discretion  
9 to compensate Defendants for the reasonable fees incurred in bringing this motion.

10

#### IV. CONCLUSION

11 Having reviewed Defendants' motion, the opposition thereto, and reply in support  
12 thereof, along with the remainder of the record, the Court hereby finds and ORDERS:

- 13
- 14 1. Defendants' Motion to DISMISS (Dkt. #27) is GRANTED IN PART as discussed  
15 above. This matter is hereby TRANSFERRED to the District of Massachusetts for  
16 all further proceedings.
  - 17 2. The pending Motion to Dismiss Cross-Claims (Dkt. #33) and Motion to Dismiss (Dkt.  
18 #40), shall be REMOVED from this Court's motion calendar and TRANSFERRED  
19 to the District of Massachusetts for resolution. The Defendants who filed those  
20 motions SHALL BE RESPONSIBLE for noting them in the District of Massachusetts  
21 pursuant to that Court's Local Rules.
  - 22 3. No later than fourteen (14) days from the date of this Order, Defendants Charlie I and  
23 Mr. Aucoin shall file a Supplemental Motion for Fees and Costs in this Court,  
24 appending the evidence necessary to support its request under RCW 4.28.185(5).

1 Defendants **shall note the motion for two Fridays after the date it is filed**. Plaintiff  
2 shall respond no later than the Monday prior to the noting date, and shall limit its  
3 response to the issue of the reasonableness of the fees and costs sought by Defendants.  
4 No Reply brief shall be filed unless otherwise requested by the Court.

5 DATED this 21<sup>st</sup> day of September 2017.  
6

7   
8

9 

---

RICARDO S. MARTINEZ  
10 CHIEF UNITED STATES DISTRICT JUDGE  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28